IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 263 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes.

2 To be referred to the Reporter or not ? No.

3 Whether their Lordships wish to see the fair copy of the judgment ? No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No.

5 Whether it is to be circulated to the civil judge ? No.

==========

STATE OF GUJARAT - Applicant(s)
Versus
BHARATBHAI GOVINDJIBHAI BALDHA - Respondent(s)

==========

Appearance :

MS ARCHANA RAVAL APP for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR KIRTIDEV R DAVE for Respondent(s) : 1,
MR RAHUL K DAVE for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 14/09/2007

ORAL JUDGMENT :

1. The petitioner has filed this criminal revision application u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973

and challenged order dated 16-4-2007 passed by the learned J.M.F.C., Dhoraji below Exh 73 in Criminal Case No. 744 of 1999.

2. The respondent is being prosecuted for the offence punishable under the provisions of the Prevention of Food Adulteration Act, 1954.

3. The prosecution examined complainant – P.W. 1 C.S. Gohel, and P.W. 2 Navinchandra Bhagwanji. Thereafter the evidence was closed and further statement of respondent was recorded u/s 313 of the Code of Criminal Procedure, 1973. The respondent in his further statement stated that he wanted to examine two witnesses. Therefore, respondent gave application Exh. 73 to examine the witnesses named therein.

4. After hearing the learned advocate for accused and learned A.P.P., the application was allowed and the respondent was permitted to examine the witnesses. Being aggrieved by the said order State has preferred this criminal revision application.

5. I have heard learned A.P.P. Ms. Archana Raval for the applicant – State and learned advocate Mr. Rahul K. Dave for the respondent at length and in great detail.

6. It appears from application Exh. 73 that out of those two witnesses sought to be examined by the respondent, one witness namely Navinchandra Bhagwanji was examined by the prosecution as P.W. 2 at Exh.61. It appears from the copy of deposition annexed with compilation that the said witness was cross-examined by the respondent. In view of the fact that the witness was examined as prosecution witness (P.W.) it is not permissible under the law to examine the same witness as defence witness. In the decision of **Banu alias Guddu V. State of Madhya Pradesh**, reported in **AIR 2004 SC 261**, relied upon by learned A.P.P. the Hon'ble Supreme Court has observed that, **the situation in a case where the prosecution has cited two categories of the witnesses to the occurrence, one consisting of persons closely related to victim and the other consisting of witnesses who have no such relation, the Public Prosecutor's duty may require him to produce**

witnesses from latter category, also subject to his discretion to limit to one or two among them. But if the Public Prosecutor got reliable information that any one among that category would not support the prosecution version he is free to state in court about that fact and skip the witness from being examined as a prosecution witness. It is open to the defence to cite him and examine him as a defence witness. In view of this, it becomes clear that when the prosecution has examined the witnesses cited in charge sheet, the defence could examine such witness as defence witness only if prosecution did not examine such witness. Therefore, the learned trial Judge committed error in exercising the jurisdiction vested in him with regard to summoning the witness already examined as prosecution witness.

7. As regards other witness, the respondent has right to examine witness of his own choice and therefore the learned trial Judge was justified in summoning the said witness as defence witness. Therefore, no jurisdictional error is committed by the learned trial Judge in summoning such witness.

8. In view of above, this revision application is partly allowed and the impugned order passed by J.M.F.C., Dhoraji below Exh. 73 in Criminal Case No. 744 of 1999 permitting the respondent to examine Navinchandra Bhagwanji as defence witness is quashed and set aside. As regards order to summon other witness, the impugned order is confirmed. Rule is made absolute to the aforesaid extent. Interim relief granted earlier stands vacated.

(Bankim N. Mehta, J.)

/JVSatwara/